

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

VIRGIL MITCHELL,

Plaintiff,

-vs-

ADW McCABE,

Defendant.

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CASE NO. 07-CV-12567

PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

**ORDER GRANTING PLAINTIFF’S MOTION FOR VOLUNTARY DISMISSAL**

Plaintiff Virgil Mitchell (“Plaintiff”), presently confined at the Southern Michigan Correctional Facility in Jackson, Michigan, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff has now filed a motion for voluntary dismissal pursuant to Fed. R. Civ. P 41(a). For the reasons stated below, the Court GRANTS Plaintiff’s motion for voluntary dismissal and DISMISSES WITHOUT PREJUDICE Plaintiff’s Complaint.

Rule 41(a) provides that a plaintiff may dismiss an action without order of court by filing a notice of dismissal before service by the adverse party of an answer or motion for summary judgment. *See Doran v. McGinnis*, 158 F.R.D. 383, 389 (E.D. Mich. 1994). Plaintiff is entitled to a voluntary dismissal of his civil rights complaint, in light of the fact that Defendant ADW McCabe has not yet been served in this case, nor has he filed an answer to the complaint or a dispositive motion. *Id.*

Therefore, the Court **GRANTS** Plaintiff’s motion for voluntary dismissal and **DISMISSES**

**WITHOUT PREJUDICE** Plaintiff's Complaint.

**SO ORDERED.**

s/Paul D. Borman  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: September 7, 2007

**CERTIFICATE OF SERVICE**

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on September 7, 2007.

s/Denise Goodine  
Case Manager